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12 IN THE UNITED STATES DISTRICT COURT
13 DISTRICT OF ARIZONA

14 United States of America,
15 Plaintiff,
16 vs.
17 Timothy Jason Wells,
18 Defendant.

19 No. CR-17-1114-PHX-DLR

20 **DEFENDANT'S MOTION TO
21 STRIKE GOVERNMENT'S
22 SENTENCING MEMORANDUM**

23 Timothy Jason Wells, through the undersigned counsel, respectfully moves
24 to strike those portions of the government's response to his objections to the
25 Presentence Report (PSR) that invite the Court to sentence him based on his
26 constitutional rights to free speech and free association (Doc. 83 at 8–9 & Doc. 83-
1 at 21). The political views Mr. Wells expressed on Facebook are described in the
27 PSR and in the government's response to his objections to the PSR. *See* PSR ¶ 6;
28 Doc. 83 at 2–3, 8–9. The government's filing also gratuitously includes a
photograph of political bumper stickers from Mr. Wells' house. Doc. 83-1 at 21
(Gov't Ex. H). In its memorandum, the government actually goes so far as to urge
the Court to sentence Mr. Wells based on “the hate that he holds toward some
groups.” *Id.* at 9. The Court should reject this invitation and strike those portions

1 of the government's filing and the PSR that describe these beliefs, because
2 considering them at sentencing would violate Mr. Wells' First Amendment rights.
3 See, e.g., *Dawson v. Delaware*, 503 U.S. 159, 166–67 (1992) (finding error in
4 admission at penalty phase of capital trial of evidence concerning defendant's
5 abstract beliefs, including membership in Aryan Brotherhood). Mr. Wells' political
6 views are not relevant to any issues at sentencing: he posted about guns on
7 Facebook during a period when he legitimately believed that he still had his gun
8 rights; his views about "some groups" are not relevant "history and characteristics";
9 and, of course, the First Amendment trumps Congress' statutory mandate that the
10 Court consider relevant circumstances. Cf. Doc. 83 at 9 (arguing incorrectly that
11 the § 3553(a) factors have no limitation in scope).

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Respectfully submitted: November 15, 2018.

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JON M. SANDS
Federal Public Defender

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s/Benjamin Good
BENJAMIN GOOD
Asst. Federal Public Defender

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1 Copy of the foregoing transmitted
2 by ECF for filing November 15, 2018, to:

3 CLERK'S OFFICE
4 United States District Court
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12 Copy mailed to:

13 JEFFREY P. BALDYS
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15 TIMOTHY JASON WELLS
16 Defendant

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